

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

BARRY HONIG, an individual,)
)
Plaintiff,)
)
v.)
)
ROBERT LADD, an individual; MGT)
CAPITAL INVESTMENTS, INC.,)
a Delaware corporation; TERI BUHL,)
an individual; and DOES 1-20,)
)
Defendants.)
_____)

Case No. 1:17-cv-00184-CCE-LPA

***SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS ROBERT
LADD AND MGT CAPITAL INVESTMENTS, INC.'S MOTION TO DISMISS***

David E. Fox, Esq.
N.C. State Bar No. 10332
MOORE & VAN ALLEN PLLC
3015 Carrington Mill Blvd., Suite 400
Morrisville, North Carolina 28202-4003
Tel: (704) 331-1000
Fax: (704) 331-1159
Email: davidfox@mvalaw.com

Charles J. Harder, Esq.*
Ryan J. Stonerock, Esq.*
HARDER MIRELL & ABRAMS LLP
132 S. Rodeo Drive, Fourth Floor
Beverly Hills, California 90212
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
rstonerock@hmafirm.com
*L.R.83.1(d) Special Appearance

Counsel for Plaintiff

SUPPLEMENTAL BRIEF

Plaintiff Barry Honig (“Plaintiff” or “Honig”) recently received additional evidence establishing that defendants Robert Ladd (“Ladd”), MGT Capital Investments, Inc.’s (“MGT”) (collectively “Ladd/MGT”) attempted to mislead this Court into believing they did not reside in North Carolina during the time period at issue in their motion to dismiss for improper venue, including when Ladd/MGT conspired with and made their defamatory statements to Buhl (*i.e.* the “Ladd Defamatory Statements”) between September 15, 2016 and September 23, 2016, and when Buhl published her September 23, 2016 article.

Ladd/MGT’s motion to dismiss argued that venue is improper in North Carolina, relying substantially on the misleading assertion that MGT’s principal offices were in New York during the relevant time period. Ladd/MGT stated, in pertinent part:

[P]ublicly available SEC filings indicate that in September 2016, when the Ladd Defamatory Statements were allegedly made, MGT’s principal corporate office was in Harrison, New York, which is located within the Southern District of New York. (Citation omitted) Indeed, Honig is aware of this fact, as he himself, in a filing that he certified as true and correct on September 29, 2016, acknowledged that MGT’s principal executive office was located in Harrison. (Citation omitted) While MGT entered into a lease agreement in August 2016 for corporate space in Durham, North Carolina and subsequently transferred its headquarters there,...it has continued to maintain its office in Harrison, as is reflected in MGT’s most recently filed Form 10-K, see Decl., Ex. G (excerpt from MGT Form 10-K for fiscal year ended Dec. 31, 2016) (“We currently employ or have consulting arrangements with 8 personnel and occupy approximately 3,000 square feet of office space in Harrison, New York and Durham, North Carolina.”)¹

¹ Honig’s subjective belief regarding the location of MGT’s principal corporate office is irrelevant. Ladd/MGT were undoubtedly in a much better position to know this information and, as discussed herein, Honig has submitted conclusive evidence with this supplemental brief that Ladd/MGT knowingly mislead the Court regarding the location.

Dkt. No. 20 at p. 13.

Ladd/MGT obviously wanted the Court to believe that neither Ladd nor MGT were present in North Carolina when they made their defamatory statements to Buhl in September 2016 and the September 23, 2016 article was published. Not surprisingly, neither Ladd nor any other MGT employee submitted a declaration to support this argument or deny being present in this District when the defamatory statements were made in September 2016.

At the time of filing his opposition (Dkt. No. 31), Honig did not know that Ladd/MGT's assertion was blatantly false. At best, Honig believed that Ladd had moved to North Carolina as early as July 2016 based on MGT's website and publically available documents. *See* Dkt. No. 32, Stonerock Declaration, Exhibits 1 and 2.² In addition to his other arguments, Honig believes that such information is sufficient to overcome Ladd/MGT's improper venue argument.

Then, in the course of preparing Honig's opposition to Defendant Teri Buhl ("Buhl") (together with Ladd/MGT, "Defendants"), Honig received information that directly contradicts Ladd/MGT's assertion. Eric Anderson, the acting Chief Technology Officer of MGT ("Anderson") at the time, has executed a declaration, under oath, stating that MGT opened its principal corporate offices in Durham, North Carolina, located at 512 S. Mangum Street, Durham, North Carolina 27701 ("MGT Offices") between

² Again, Ladd is the President and CEO of MGT and the one who orchestrated the conspiracy to defame Honig. *See* Dkt. No. 1, Complaint at ¶¶ 1-4.

September 1, 2016 and September 3, 2016. Dkt. No. 36, Declaration of Eric Anderson (“Anderson Decl.”), ¶ 4.³ For the convenience of the Court, a copy of Anderson’s declaration is attached hereto as Exhibit A.

In addition, Anderson met with Ladd in North Carolina between August 25, 2016 and August 29, 2016 to prepare for MGT’s move into the MGT Offices in this District and attended a walkthrough of the new MGT Offices with Ladd during that time. *Id.*, ¶ 3. Anderson also made a second trip to North Carolina from September 17, 2016 through September 24, 2016 during which time he worked out of the MGT Offices in this District, which were fully operational. *Id.*, ¶5. Ladd and several computer programmers were also present at the MGT offices in this District, as was MGT’s Director of Corporate Communications, Tiffany Madison. *Id.* This is the precise time period during which the conspiracy and other tortious conduct by and between Defendants occurred. *Id.*, ¶ 6.

Accordingly, Ladd/MGT’s assertion that its principal corporate office and implication that any communications between Ladd and Buhl during the relevant time

³ In Buhl’s motion to dismiss, Buhl attempted to refute having communications with North Carolina residents by stating that she did not contact a North Carolina number as part of her investigation. *See* Dkt. No. 29, Buhl Declaration at ¶ 24 (“I never placed or received a telephone call to a North Carolina phone number in connection with the drafting, research, or investigating of the articles attached as Exhibits A and C through F to the Complaint....”). Buhl’s statement is also misleading, at best. In addition to Mr. Anderson’s declaration showing communications between Ladd and Buhl while Ladd was in North Carolina, Honig submitted his own declaration showing, *inter alia*, the more likely scenario that Buhl simply called Ladd on his New York cell phone while Ladd was in North Carolina. *See* Dkt. No. 35, Honig Declaration, ¶ 4 (stating that Honig has known Ladd for years, has had numerous conversations with him while he was using his cell phone, and is aware that Ladd’s cell phone number has a New York area code). For the convenience of the Court, a copy of Honig’s declaration is attached hereto as Exhibit B.

period were in New York is blatantly false. Ladd (and MGT's main offices) resided in this District well before Buhl published her September 23, 2016 article about Honig (and when Ladd/MGT made their defamatory statements to Buhl).

Further, as detailed more fully in the Anderson Declaration, Ladd admitted to Anderson that he (Ladd) conspired with Buhl to defame Honig, while residing and while working at the MGT Offices in this District. *See* Anderson Decl., ¶ 6. Mr. Anderson further explains that John McAfee, the Executive Chairman of MGT, divulged to Mr. Anderson in-person at the MGT Offices in this District, that Ladd/MGT had concocted the conspiracy with Buhl to defame Honig so that they could hopefully boost the share price of MGT. *See id.* at ¶ 10.

Overall, it has now become obvious that Ladd/MGT intentionally misled the Court in its motion to dismiss. Honig therefore respectfully requests that the Court consider this supplemental information and evidence (the declarations of Mr. Anderson and Honig) and deny Ladd/MGT's motion to dismiss in its entirety.

Dated: July 28, 2017

Respectfully submitted,

MOORE & VAN ALLEN PLLC

By: /s/ David E. Fox

David E. Fox, Esq.

N.C. State Bar No. 10332

Moore & Van Allen PLLC

3015 Carrington Mill Blvd., Suite 400

Morrisville, North Carolina 28202-4003

Tel: (704) 331-1000

Fax: (704) 331-1159

Email: davidfox@mvalaw.com

Charles J. Harder, Esq.*
Ryan J. Stonerock, Esq.*
HARDER MIRELL & ABRAMS LLP
132 S. Rodeo Drive, Fourth Floor
Beverly Hills, California 90212
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: rstonerock@hmafirm.com
* LR 83.1(d) Special Appearance

Counsel for Plaintiff

CERTIFICATE OF WORD COUNT

This brief does not exceed the word limit of 9,000 words and complies with LR

7.3(d)(1).

Dated: July 28, 2017

Respectfully submitted,

MOORE & VAN ALLEN PLLC

By: /s/ David E. Fox
David E. Fox, Esq.
N.C. State Bar No. 10332
Moore & Van Allen PLLC
3015 Carrington Mill Blvd., Suite 400
Morrisville, North Carolina 28202-4003
Tel: (704) 331-1000
Fax: (704) 331-1159
Email: davidfox@mvalaw.com

Charles J. Harder, Esq.*
Ryan J. Stonerock, Esq.*
HARDER MIRELL & ABRAMS LLP
132 S. Rodeo Drive, Fourth Floor
Beverly Hills, California 90212
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: rstonerock@hmafirm.com
* LR 83.1(d) Special Appearance

Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing ***SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS ROBERT LADD AND MGT CAPITAL INVESTMENT, INC.'S MOTION TO DISMISS*** was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

Jonathan C. Krisko
Erik R. Zimmerman
Robinson, Bradshaw & Hinson P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
jkrisko@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com

Darren Laverne
Jeffrey W. Davis
John P. Coffey
Kramer, Levin, Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
dlaverne@kramerlevin.com
jdavis@kramerlevin.com
scoffey@kramerlevin.com

*Attorneys for Defendants, Robert Ladd
and MGT Capital Investments, Inc.*

Kimberly M. Marston
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
kmarston@brookspierce.com

Eric M. David
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

1700 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601
edavid@brookspierce.com

Michael Tremonte
Erica A. Wolff
Sher Tremonte LLP
90 Broad Street, 23rd Floor
New York, NY 10004
mtremonte@shertremonte.com
ewolff@shertremonte.com

Attorneys for Defendant, Teri Buhl

This 28th day of July, 2017.

/s/ David E. Fox
David E. Fox